

# HOUSE BILL No. 1168

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-31-2; IC 4-31-9.5; IC 4-31-14; IC 6-8.1-1-1.

**Synopsis:** Horse racing matters. Imposes a wagering tax on amounts wagered through advance deposit wagering by account holders in Indiana. Provides for the distribution of advance deposit wagering tax revenues. Authorizes paid fantasy sports games. Provides that paid fantasy sports games conducted in accordance with the paid fantasy sports game statute do not constitute gambling. Provides that paid fantasy sports games may be conducted through an Internet web site maintained and operated by a game operator or on the premises of certain licensed facilities under a contract between a game operator and the owner of the licensed facility. Provides for the regulation of paid fantasy sports games by the paid fantasy sports division of the horse racing commission. Appropriates to the division fees and civil penalties collected by the division.

**Effective:** July 1, 2016.

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January 7, 2016, read first time and referred to Committee on Public Policy.

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Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1168

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 4-31-2-1.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2016]: **Sec. 1.1. "Account holder" means an individual who has**  
4 **established an advanced deposit wagering account with a**  
5 **secondary pari-mutuel organization.**

6       SECTION 2. IC 4-31-2-1.3 IS ADDED TO THE INDIANA CODE  
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2016]: **Sec. 1.3. "Advance deposit wagering" means a system of**  
9 **pari-mutuel wagering in which wagers are debited and payouts are**  
10 **credited to an account established by an individual and held by a**  
11 **secondary pari-mutuel organization, regardless of whether the**  
12 **wagers are made in person, by telephone, or through**  
13 **communication by other electronic means. The term does not**  
14 **include an approved limited mobile gaming system.**

15       SECTION 3. IC 4-31-2-5.3 IS ADDED TO THE INDIANA CODE  
16 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
17 1, 2016]: **Sec. 5.3. "Communication by other electronic means"**



means communication by any electronic communication device, including any of the following:

- (1) A personal computer or other device enabling communication through the Internet.
- (2) A private network.
- (3) An interactive television.
- (4) A wireless communication technology.
- (5) An interactive computer service (as defined in IC 35-45-5-1).

SECTION 4. IC 4-31-2-20.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 20.6. "Secondary pari-mutuel organization" means a person that offers advance deposit wagering in Indiana. A person that offers advance deposit wagering is presumed, subject to rebuttal, to be offering advance deposit wagering in Indiana if the person:

- (1) holds, debits, or credits advance deposit wagering accounts for Indiana residents;
- (2) regularly solicits business from potential patrons located in Indiana; or
- (3) regularly solicits and receives deposits or wagers from account holders located in Indiana.

SECTION 5. IC 4-31-2-20.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 20.8. "Simulcast" means the communication by other electronic means of a horse race contested at a recognized meeting and other information related to the horse race, including the transmission of pari-mutuel wagering odds, amounts wagered, and payoffs on amounts wagered.

SECTION 6. IC 4-31-9.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

#### **Chapter 9.5. Advance Deposit Wagering Tax**

Sec. 1. (a) A secondary pari-mutuel organization shall pay to the department of state revenue a tax on the total amount of money wagered by account holders located in Indiana as follows:

- (1) Six percent (6%) of the total amount of money wagered on live races conducted at a permit holder's racetrack.
- (2) Six percent (6%) of the total amount of money wagered on live races conducted in another state or on simulcasts that originate from another state.



(b) The secondary pari-mutuel organization shall remit the tax on money wagered by account holders located in Indiana during a particular month before the fifteenth day of the following month.

(c) The tax imposed by this section is a listed tax for purposes of IC 6-8.1-1.

Sec. 2. A secondary pari-mutuel organization is entitled to a credit against the tax imposed under this chapter equal to the amount, if any, of wagering tax paid to any other state, territory, or possession of the United States for the same money wagered.

Sec. 3. The department of state revenue shall distribute one hundred percent (100%) of the wagering taxes it receives from a secondary pari-mutuel organization to the commission for deposit in the equine industry infrastructure fund established under section 4 of this chapter.

Sec. 4. (a) The equine industry infrastructure fund is established.

(b) The fund shall be administered by commission.

(c) The fund consists of advanced deposit wagering tax revenue deposited in the fund under this chapter.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(f) Money in the fund may be used by the commission only for the following purposes:

(1) Fifty percent (50%) of the money in fund must be used to provide grants to permit holders for the improvement and maintenance of the permit holders' horse racing facilities.

(2) Fifty percent (50%) of the money in the fund must be used to provide grants to the state fair commission, county fairs, and the department of parks and recreation in Johnson County for the improvement and maintenance of horse racing and training facilities at the state fairgrounds, county fairgrounds, and county park tracks.

Sec. 5. The payment of the tax imposed under this chapter does not make the secondary pari-mutuel organization immune from criminal prosecution. However, confidential information acquired by the department of state revenue may not be used to initiate or facilitate prosecution for an offense other than an offense based on a violation of this chapter.



SECTION 7. IC 4-31-14 IS ADDED TO THE INDIANA CODE AS  
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
1, 2016]:

**Chapter 14. Paid Fantasy Sports Games**

**Sec. 1.** A fantasy game conducted under this chapter does not constitute gambling for purposes of IC 35-45-5.

**Sec. 2.** As used in this chapter, "confidential information" means information related to the play of paid fantasy sports games by game participants obtained solely as a result of or by virtue of a person's employment.

**Sec. 3.** As used in this chapter, "division" refers to the paid fantasy sports division established by section 10 of this chapter.

**Sec. 4.** As used in this chapter, "game operator" means a person who is engaged in the business of professionally conducting paid fantasy sports games for cash prizes for members of the general public.

**Sec. 5.** As used in this chapter, "game participant" means an individual who participates in a paid fantasy sports game offered by a game operator.

**Sec. 6.** As used in this chapter, "licensed facility" means any of the following:

- (1) A satellite facility licensed under IC 4-31-5.5.
- (2) A riverboat (as defined by IC 4-33-2-17).
- (3) A gambling game facility operated under IC 4-35.

**Sec. 7.** As used in this chapter, "licensee" means any of the following:

- (1) A permit holder (as defined by IC 4-31-2-14).
- (2) A licensed owner (as defined by IC 4-33-2-13).
- (3) An operating agent (as defined by IC 4-33-2-14.5).

**Sec. 8.** As used in this chapter, "paid fantasy sports game" means any fantasy or simulation sports game or contest that meets the following conditions:

- (1) The values of all prizes and awards offered to winning game participants are established and made known to the game participants in advance of the game or contest.
- (2) All winning outcomes reflect the relative knowledge and skill of the game participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events.
- (3) No winning outcome is based on the score, point spread, or performance or performances of any single team or



combination of teams, or solely on any single performance of an individual athlete or player in any single event.

Sec. 9. As used in this chapter, "person" means any association, corporation, limited liability company, fiduciary, individual, joint stock company, joint venture, partnership, sole proprietorship, or other private legal entity.

Sec. 10. The paid fantasy sports division is established within the commission.

Sec. 11. The division may do the following:

- (1) Investigate and reinvestigate applicants, game operators, and licensees with whom a game operator has entered into a contract under section 12 of this chapter.
- (2) Investigate alleged violations of this chapter.
- (3) Take appropriate administrative enforcement or disciplinary action against a person who violates this chapter.
- (4) Conduct hearings.
- (5) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, and other relevant documents.
- (6) Administer oaths and affirmations to witnesses.

Sec. 12. A game operator may:

- (1) conduct one (1) or more paid fantasy sports games through an Internet web site maintained and operated by the game operator; or
- (2) contract with a licensee to conduct one (1) or more paid fantasy sports games on the premises of a licensed facility.

Sec. 13. (a) A game operator must:

- (1) be authorized to transact business in Indiana under IC 23; and
- (2) pay to the division the initial fee imposed under subsection (b).

(b) A game operator shall pay to the division an initial fee of five thousand dollars (\$5,000) for the privilege of conducting paid fantasy sports games under this chapter.

(c) A game operator shall annually pay to the division a five thousand dollar (\$5,000) fee on the anniversary date of the payment made under subsection (b) to renew the privilege of conducting paid fantasy sports games under this chapter.

(d) The division shall deposit all fees received under this section in the state general fund. Money deposited under this subsection is continuously appropriated to the division for the division's use in administering this chapter.



1       **Sec. 14. A game operator must do the following before**  
 2 **beginning to conduct paid fantasy sports games under this chapter:**

3       **(1) Provide written notice to the division of the game**  
 4 **operator's intent to conduct paid fantasy sports games under**  
 5 **this chapter.**

6       **(2) Submit for the division's approval any proposed contract**  
 7 **with a licensee through which the game operator intends to**  
 8 **conduct paid fantasy sports games under this chapter.**

9       **(3) Submit a plan for doing the following:**

10       **(A) Verifying the identity and age of patrons who wish to**  
 11 **participate in a paid fantasy sports game conducted under**  
 12 **this chapter.**

13       **(B) Maintaining the security of the identifying and**  
 14 **financial information of game participants participating in**  
 15 **paid fantasy sports games conducted under this chapter.**

16       **(C) Promoting paid fantasy sports games conducted under**  
 17 **this chapter in a manner that accurately describes the**  
 18 **relationship between the game operator and a licensee.**

19       **Sec. 15. (a) A licensee that enters into a contract with a game**  
 20 **operator to conduct paid fantasy sports games on the premises of**  
 21 **the licensee's licensed facility shall pay to the division:**

22       **(1) an initial fee of five thousand dollars (\$5,000) for the**  
 23 **privilege of conducting paid fantasy sports games under this**  
 24 **chapter; and**

25       **(2) in each calendar year thereafter, a five thousand dollar**  
 26 **(\$5,000) fee on the anniversary date of the payment made**  
 27 **under subdivision (1) to renew the privilege of conducting**  
 28 **paid fantasy sports games under this chapter.**

29       **(b) The division shall deposit all fees received under this section**  
 30 **in the state general fund. Money deposited under this subsection is**  
 31 **continuously appropriated to the division for the division's use in**  
 32 **administering this chapter.**

33       **Sec. 16. A game operator may charge an entry fee to participate**  
 34 **in a paid fantasy sports game conducted under this chapter.**

35       **Sec. 17. An individual must be at least eighteen (18) years of age**  
 36 **to participate in a paid fantasy sports game conducted under this**  
 37 **chapter.**

38       **Sec. 18. Any prize awarded in a paid fantasy sports game must**  
 39 **be made known before the fantasy game begins. The value of a**  
 40 **prize awarded in the paid fantasy sports game may not be**  
 41 **determined by the number of game participants in the paid fantasy**



1 sports game or the amount of entry fees paid by the game  
2 participants.

3 **Sec. 19. A game operator shall implement procedures to do the**  
4 **following:**

5 (1) Prevent employees of the game operator or a licensee with  
6 whom the game operator has entered into a contract under  
7 section 12 of this chapter, and any relative of an employee  
8 living in the household of the employee, from competing in a  
9 paid fantasy sports game in which the cash prize exceeds five  
10 dollars (\$5).

11 (2) Prevent an owner, director, or officer of the game  
12 operator or a licensee with whom the game operator has  
13 entered into a contract under section 12 of this chapter from  
14 being a game participant in any paid fantasy sports game  
15 offered by the game operator.

16 (3) Prevent employees of the game operator or a licensee with  
17 whom the game operator has entered into a contract under  
18 section 12 of this chapter from sharing confidential  
19 information that could affect paid fantasy sports game play  
20 with third parties until the information is made publicly  
21 available.

22 (4) Verify that a game participant is at least eighteen (18)  
23 years of age.

24 (5) Prevent an individual who is a player, game official, or  
25 other participant in an actual sporting event or competition  
26 from participating in any paid fantasy sports game that is  
27 determined in whole or in part on the performance of that  
28 individual, the individual's actual team, or the accumulated  
29 statistical results of the sporting event or competition in which  
30 the individual is a player, game official, or other participant.

31 (6) Allow individuals to restrict themselves from entering paid  
32 fantasy sports games.

33 (7) Disclose the number of paid fantasy sports games a single  
34 game participant may enter.

35 **Sec. 20. A game operator shall take reasonable steps to do the**  
36 **following:**

37 (1) Prevent the participation in paid fantasy sports games of  
38 individuals who have restricted themselves from entering paid  
39 fantasy sports games.

40 (2) Prevent game participants from entering more than the  
41 maximum number of allowed paid fantasy sports games.





1       Sec. 21. A game operator shall segregate the funds of game  
2 participants from the operational funds of the game operator.

3       Sec. 22. For the protection of the funds of game participants  
4 held in paid fantasy sports game accounts, a game operator shall  
5 maintain a reserve in the form of cash, cash equivalents, an  
6 irrevocable letter of credit, a bond, or a combination of these  
7 sources that is equal to the amount of money deposited in paid  
8 fantasy sports game accounts of game participants.

9       Sec. 23. A game operator shall contract annually with a certified  
10 public accountant to perform a financial audit of the game  
11 operator's paid fantasy sports game operations under this chapter  
12 to ensure compliance with this chapter. The game operator shall  
13 submit the results of the audit to the division. The same certified  
14 public accountant may not perform more than two (2) consecutive  
15 financial audits for a game operator under this section.

16       Sec. 24. The division may impose a civil penalty upon a game  
17 operator, a licensee, or an employee of a game operator or a  
18 licensee for a violation of this chapter. The maximum amount of a  
19 civil penalty imposed under this section for a particular violation  
20 is one thousand dollars (\$1,000). The division shall deposit all civil  
21 penalties received under this section in the state general fund.  
22 Money deposited under this section is continuously appropriated  
23 to the division for the division's use in administering this chapter.

24       Sec. 25. Entry fees and other revenues received by a licensee  
25 under a contract with a game operator for conducting paid fantasy  
26 sports games are not considered to be received from a licensee's  
27 gaming operations and are not subject to:

- 28       (1) a wagering tax imposed under IC 4-33-13 or IC 4-35-8;
- 29       (2) the fee imposed under IC 4-35-8.5;
- 30       (3) the distribution required under IC 4-35-7-12; or
- 31       (4) any other tax or fee imposed upon a licensee under
- 32       IC 4-31, IC 4-33, or IC 4-35.

33       SECTION 8. IC 6-8.1-1-1, AS AMENDED BY P.L.220-2014,  
34 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
35 JULY 1, 2016]: Sec. 1. "Listed taxes" or "taxes" includes only the  
36 pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); **the advance**  
37 **deposit wagering tax (IC 4-31-9.5)**; the riverboat admissions tax  
38 (IC 4-33-12); the riverboat wagering tax (IC 4-33-13); the slot machine  
39 wagering tax (IC 4-35-8); the type II gambling game excise tax  
40 (IC 4-36-9); the gross income tax (IC 6-2.1) (repealed); the utility  
41 receipts and utility services use taxes (IC 6-2.3); the state gross retail  
42 and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3); the



1 supplemental net income tax (IC 6-3-8) (repealed); the county adjusted  
 2 gross income tax (IC 6-3.5-1.1); the county option income tax  
 3 (IC 6-3.5-6); the county economic development income tax  
 4 (IC 6-3.5-7); the auto rental excise tax (IC 6-6-9); the financial  
 5 institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the special fuel  
 6 tax (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax  
 7 collected under a reciprocal agreement under IC 6-8.1-3; the motor  
 8 vehicle excise tax (IC 6-6-5); the aviation fuel excise tax (IC 6-6-13);  
 9 the commercial vehicle excise tax (IC 6-6-5.5); the excise tax imposed  
 10 on recreational vehicles and truck campers (IC 6-6-5.1); the hazardous  
 11 waste disposal tax (IC 6-6-6.6) (repealed); the cigarette tax (IC 6-7-1);  
 12 the beer excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the  
 13 wine excise tax (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5);  
 14 the malt excise tax (IC 7.1-4-5); the petroleum severance tax  
 15 (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the various food and  
 16 beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13 and  
 17 IC 6-9-28); the regional transportation improvement income tax  
 18 (IC 8-24-17); the oil inspection fee (IC 16-44-2); ~~the emergency and~~  
 19 ~~hazardous chemical inventory form fee (IC 6-6-10)~~; the penalties  
 20 assessed for oversize vehicles (IC 9-20-3 and IC 9-30); the fees and  
 21 penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30); and  
 22 any other tax or fee that the department is required to collect or  
 23 administer.

